

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

JEREMY HILL,

Petitioner,

v.

GREG WILLIAMS, et al.,

Respondent.

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Case No. 5:11-cv-194-R

ORDER

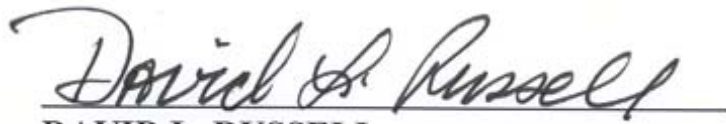
Petitioner filed this action pursuant to 28 U.S.C. § 2254 seeking a writ of habeas corpus. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Doyle W. Argo for preliminary review. On April 5, 2011, Judge Argo issued a Report and Recommendation wherein he recommended that the petition be dismissed as untimely. The matter is currently before the Court on Petitioner's timely objection to the Report and Recommendation, filed by counsel.

There is no dispute that Petitioner's application for habeas corpus relief was not timely filed under the provisions of 28 U.S.C. § 2244(d)(1)(A). Additionally, Petitioner presents no basis for statutory tolling, because the one-year limitations period is tolled only when a state application for post-conviction relief is filed prior to the expiration of the AEDPA limitations period, and Petitioner did not file his application for post-conviction relief until more than three years after his conviction became final.

Finally, Petitioner presents no basis for equitable tolling of the statute of limitations period. The focus on events occurring after the expiration of the statute of limitations period presents no explanation or justification for the fact that Petitioner's conviction became final on April 11, 2000, and Petitioner did not seek post-conviction relief in state court until September 5, 2003. Nothing has been presented to explain this delay, which delay precludes the Court from finding that this case presents the rare and exceptional circumstance where equitable tolling should be applied.

Having considered Petitioner's objection to the Report and Recommendation, the Court hereby ADOPTS the Report and Recommendation in its entirety, and the petition is hereby dismissed as untimely filed.

IT IS SO ORDERED this 26th day of April 2011.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE